

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules To Permit Flexible Service)
Offerings in the Commercial)
Mobile Radio Services)

WT Docket No. 96-6

To: The Commission

REPLY COMMENTS
OF
THE SOUTHERN COMPANY

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The Southern Company ("Southern"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's ("Commission") rules, respectfully submits the following Reply Comments in the above-captioned Notice of Proposed Rule Making ("NPRM") proceeding.^{1/}

^{1/} Amendment of the Commission's Rules To Permit Flexible Service Offerings In the Commercial Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rule Making, adopted January 24, 1996.

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INTRODUCTION

1. Southern operates a digitally-enhanced Specialized Mobile Radio ("SMR") system which will provide interconnection to the public switched network system and will be classified as a Commercial Mobile Radio Service ("CMRS") in August 1996. Accordingly, as a prospective CMRS provider, Southern has an interest in this proceeding.

2. Southern applauds the Commission's efforts to create flexibility in the services offerings of CMRS providers. Southern believes that expanding the service offerings of CMRS providers will make them more competitive with other carriers and will attract more customers. In this regard, Southern supports the goals of this proceeding. Nevertheless, upon review of the Comments filed in this proceeding, Southern is concerned that these types of ancillary CMRS offerings could result in increased regulation for CMRS providers. Accordingly, Southern submits these Reply Comments in response to the Comments filed in this proceeding.

REPLY COMMENTS

3. Southern believes that the goal of creating flexible service opportunities for CMRS providers is in the public interest. Introduction of new fixed services as

ancillary offerings to the mobile service will make the CMRS service more attractive and should increase competition in the mobile and wireline telephony industries. Southern believes, however, that most CMRS services such as SMR will serve specialized markets which will not be in a position to compete head-to-head with existing wireline services. Southern just began commercial operation of its digital, wide-area SMR system earlier this year. Southern believes that few CMRS providers, with the exception of a few cellular licensees (such as those owned by a wireline carrier), are in a position to adequately compete with wireline services even if fixed services are offered on an ancillary basis.

I. Ancillary Fixed Service Should not Be Regulated as a Local Exchange Service

4. Southern opposes the idea that CMRS providers who offer fixed services should be regulated as local exchange carriers ("LECs").^{2/} Placing unnecessary, burdensome regulatory requirements on CMRS providers during the development of their systems will only stifle growth of the industry and allow LECs to maintain their competitive edge in providing local loop and other fixed services. The

^{2/} See, Comments of Ameritech at 7-8, Southwestern Bell Communications, Inc. at 5-6, Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") at 2 and Bell Atlantic at 2.

nascency of the CMRS industry dictates that the Commission exercise its newly-sanctioned forbearance authority when creating new service offerings for CMRS. Even Bell Atlantic admitted that CMRS providers are not commercially able to compete with wireline services at this time.^{3/}

5. While Southern has no opinion as to whether LEC regulation regarding fixed services should be relaxed, as suggested by some commenters, Southern believes the Commission's primary concern should be creating opportunities for competition to flourish. Added regulation should only be imposed when and if disparities develop in particular markets.^{4/} In this context, regulatory parity between CMRS providers and wireline carriers is a misplaced concept inappropriately applied to this proceeding. This concept was developed for similarly situated CMRS providers (i.e., cellular, SMR and PCS licensees), where Congress perceived a need to insure symmetry of regulation.^{5/} Wholesale application to small CMRS companies of the type of regulation now reserved for dominant carriers such as LECs,

^{3/} Comments of Bell Atlantic at 1.

^{4/} See, Comments of OPASTCO at 3-6.

^{5/} See, Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, 107 Stat. 312, 392 (1993).

would be inappropriate and would not promote competitive entry.

II. The Provision of Fixed Services on an Ancillary Basis Should be Classified as CMRS

6. Southern supports the Commission's tentative conclusion to classify fixed services offered by CMRS providers as CMRS. Other commenters agreed.^{6/} Because these services are being offered on an ancillary basis only and will serve to enhance the mobile communications of a CMRS licensee, Southern agrees that these services should be considered as an integral part of the CMRS offering. Clearly, wireless local loop service is a mere enhancement of the mobile communications, and allows a mobile customer to connect the calls to their final designation through wireless switching or traffic aggregation. Offered apart from the mobile telephony, this service is of no value to a mobile customer. The offering of fixed services on CMRS systems will likely comprise a small portion of the communication service being offered by CMRS providers. The ability to provide fixed services merely adds value to the underlying mobile service. Therefore, CMRS classification is more appropriate for these ancillary services.

^{6/} Comments of Motorola at 3, Cellular Telecommunications Industry Association ("CTIA") at 13-15 and American Mobile Telecommunications Association at 4-5.

7. Moreover, Southern agrees with CTIA that state regulations of fixed services should be preempted.^{7/} State regulation, like federal regulation, will impede the growth of CMRS systems. Southern disagrees with commenters who argue that regulating wireless fixed services (particularly wireless local loop) as CMRS favors wireless technology over wireline technology.^{8/} Southern believes that the argument regarding the nascency of the CMRS industry as discussed above is equally applicable here. Wireless local loop and other fixed services must have an opportunity to be developed before unnecessary regulations are imposed. Historically, state regulations have served to enable competitors to forestall new entrants in various markets. Maintaining the CMRS classification assures that states do not impede the development of these new services before they have been introduced to the public.

CONCLUSION

8. Southern supports allowing CMRS providers the flexibility to offer new fixed services, and believes that proceeding with this rulemaking is in the public interest. Southern agrees that such services should be permitted on an

^{7/} Comments of CTIA at 7-14.

^{8/} Comments of National Associations of Regulatory Utility Commissioners at 4 and Ameritech at 6.

ancillary basis and maintain CMRS classification. If CMRS licensees are to be competitive, limited federal regulation and no state regulation of fixed services are paramount.

WHEREFORE THE PREMISES CONSIDERED, The Southern Company respectfully requests that the Commission act upon these Reply Comments in a manner consistent with the views expressed herein.

Respectfully submitted,

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